Supreme Court, U.S.
FILED

091506 JAN 18 2010

OFFICE OF THE CLERK

Case Number: 09-10136G
D. C. Docket No. 07-00208-CV-HLM-4

IN THE

SUPREME COURT OF THE UNITED STATES

RANDALL M. JONES

Petitioner

v.

ANHEUSER BUSCH

Respondent

On petition for Writ of Certiorari To The United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Randall M. Jones
Pro Se
21 Winterwood Trail
Taylorsville, Georgia 30178
(678) 882-6063 cell
rjpine05@gmail.com

QUESTIONS PRESENTED

This case involves the denial of a motion for reconsideration and the denial as moot for motion to dismiss attorney.

1. Whether petitioner can use an intervening change of law.

2. Whether they considered petitioners fact to the district court.

CERTIFICATE OF INTERESTED PERSON

Randall M. Jones v. Anheuser Busch

Appeal No.09-10136G

Pursuant to Eleventh Circuit Rule 26.1, I/Appellant hereby certifies that the following persons and entities have an interest in the outcome of this case:

Hatten, James N., Clerk of District Court

Jones, Randall M. Plaintiff-Appellant

Kotum, Melissa L., Counsel for Defendant-Appellee, Anheuser Busch

Munger, Stephen X., Counsel for Defendant-Appellee, Anheuser Busch

Murphy, Honorable Harold, Northern District of Georgia

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

CERTIFICATE OF INTERESTED PERSON.....ii

TABLE OF CONTENTS.....iii

TABLE OF APPENDICES.....iv

TABLE OF CITATIONS AND AUTHORITIES.....v

STATEMENT OF JURISDICTION.....vi

STATEMENT OF THE CASE.....1

ARGUMENT.....2

CONCLUSION.....5

TABLE OF APPENDIXES

Appendix Doc. 1--Opinion of the United States Court of Appeals for the 11th Circuit October 19. 2009...1A

Appendix Doc. 2---Mandate of the United States Court of Appeals filed October 27, 2009.....3A

Appendix Doc. 3---President Obama signs Lilly Ledbetter Fair Pay Act.....4A

Appendix Doc. 4--Motion for an appeal in the United States Court.. .....8A

Appendix Doc. 5---Partial transcript from the United States District Court.....10A

Appendix Doc. 6---Argument to the United States District Court for the Northern District Court of Georgia.....13A

Appendix Doc. 7---Letter from Respondent's Attorney.....15A

Appendix Doc. 8--Opinion of the United States Court of Appeals for the 11th Circuit filed August 7, 2009... .....17A

Appendix Doc. 9 Final Report and Recommendations 22A

TABLE OF APPENDIXES (cont.)

Appendix Doc. 10—Order for Service of Final Report and Recommendation.....25A

Appendix Doc. 11—Order of the United States District Court for the Northern District of Georgia 27A

TABLE OF CITATIONS AND AUTHORITIES

Conley v. Gibson
355 U.S. 41, 47, 78 S. CT. 99, 2L. ED. 2D 80 1957.....3

Lilly Ledbetter v. Goodyear Tire and Rubber Co. S.181 (January 29, 2009).....3

Linder v. Portocarrero 963 F. 2D 332 (11th Cir. 1992.....4

Quality Foods De Centro America, S. A. v. Latin American Agribusiness Dev. Corp. S. A. 711 F. 2D 989, 994-995 (11th Cir.1983).....4

*Tatroe v. Cobb County, GA. Civil action No. 1:04-CV-1074-WSD, 2008 WL 361010, AT * 3 (N.D.GA. Feb. 08, 2008).....2*

STATEMENT OF JURISDICTION

This Supreme Court has jurisdiction because this petition for Writ of Certiorari is filed less than 90 days from denial of rehearing en banc.

Statement of the case

This is a unique case in that Jones, denial for reconsideration, caused the loss of Plaintiffs protected rights under Title VII Discrimination.

The Lilly Ledbetter Act amends Title VII discrimination allows charges filed on time bring forth charges outside of time limit.

Magistrate Judge Walter E. Johnson error of facts.

The defendant had sufficient material for discovery. Jones has not waived any rights.

Corroborating evidence – Evidence that differs from but strengthens or confirms what other evidence shows.

Cumulative evidence – addition evidence that supports a fact established by the existing evidence.

ARGUMENT

Purpose of Reconsideration

In Tatroe v. Cobb County, GA. Civil action No. 1:04-CV-1074-WSD, 2008 WL 361010, AT * 3 (N.D.GA. Feb. 08, 2008). "A motion for reconsideration is appropriate only where there is: Newly discovered evidence; an intervening development or change in controlling law; or a need to correct a clear error of law or fact."

Where the judgment in the first action is not based on the merits, the principle of res judicata is not applied. A determination of whether there has been a judgment on the merits may be considered as having two separate branches.

1. Has the sitting judge or other determining body issued a decision on the merits of the plaintiff's case?

2. Has the party which 'lost' under the decision has a full and fair opportunity to litigate, so as to ensure that the decision on the merits was based on a full understanding of the facts, principles, and consequences of the decision?"

Petitioner filed for reconsideration to correct a clear error of facts. On 10/02/2008 these facts used by Magistrate Judge Walter E. Johnson is Plaintiff's failure to cooperate in discovery and his failure to abide by order of this court shows that he has no knowledge interest in pursuing this action (Appendix Doc, 6). This fact is based on speculation. Because it could also show that Plaintiff had no knowledge of the order, Petitioner's complaint obtained "I was still pursuing this case". (Appendix. Doc. 7) Petitioner also left a copy of the letter he had received from Respondent.

(Appendix Doc. 7)

The Lily Ledbetter Fair Pay Act (S.181) (January 29, 2009) was not available at the time of first complaint filed (December 18, 2008). This act is ripe for the instant case. This act allows for occurrences that have occurred but not filed within the time limit the opportunity to bring forward for justice.

Petitioner's attorney sin was not filing Documentation on time. This act forgives the sin of late filing (Appendix. Doc. 3). President Obama declaring that"[i] n signing this bill today, I intend to send a clear message: That making our economy work means making sure it works for everyone." (Appendix. Doc. 4) This is a case about fair pay. Petitioner placed in his complaint for an appeal both Brice Bearden and Paul Cousins were given another chance of employment after another problem.

Filed (January 6, 2009) (Appendix. Doc. 5) A complaint should be dismissed under Rule 12 (b) (6) Conley v. Gibson, 355 U.S. 41, 47, 78 S. CT 99, 2 L. ED. 2D 80 (1957) Linder v. Portocarrero, 963 F. 20 332 (11th Cir. 1992). In ruling on a motion to dismiss, the court must accept the facts pleaded in the complaint as true and construe them in the light most favorable to the Plaintiff.
Quality Foods De Centro America, S.A. v. Latin American Agri Business Dev. Corp. S.A., 711 F.2D 989, 994-995 (11th Cir. 1983).

Conclusion

The denial of Reconsideration should be reversed and the case reinstated. Under the unique facts of this case and intervening change of law, Jones is entitled to sue Anheuser Busch for violations protected by Title VII of the civil rights act.

.Res Judicata does not bar claim

.Lilly Ledbetter constituted and intervening Change of law. Dismissal is de novo

Dated: _____, 2010

By: _____

Randall M. Jones
21 Winterwood trail
Taylorsville, GA 30178
(678) 882-6063
Pro Se

Appendix

Appendix Doc. 1 1A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

Case Number: 09-10136G
D. C. Docket No. 07-00208-CV-HLM-4

Randall M. Jones
Plaintiff-Appellant

versus

Anheuser Busch
Defendant-Appellee

On appeal from the United States District Court
for the Northern District of Georgia

ON PETITION (S) FOR REHEARING AND
PETITION (S) FOR REHEARING EN BANC

Before: TJOFLAT, MARCUS and ANDERSON,
Circuit Judges.

PER CURIAM:

The Petition (s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition (s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

_____

UNITED STATES CIRCUIT JUDGE

ORD-42
(2 / 05)

Appendix Doc. 2 3A

UNITED STATES COURT of APPEALS
FOR THE ELEVENTH CIRCUIT

09-10136G

District Court Docket No.
07-00208-CV-HLM-4

RANDALL M. JONES,

Plaintiff-Appellant

versus

ANHEUSER BUSCH

Defendant-Appellee

Appeal from the United States District
Court for the Northern District of Georgia

JUDGMENT

It is hereby ordered, adjudged, and decreed
That the attached opinion included herein by
reference, is entered as the judgment of this
court. Entered: August 7, 2009

For the Court: Thomas K. Kahn, Clerk
By: Clark, Djuanna
(Appendix Doc. 2)

Appendix Doc. 3

President Obama Signs Lilly Fair Pay Act into Law

With Lilly Ledbetter standing by his side, President Barack Obama signed the Lilly Ledbetter Fair Pay Act (S. 181) into law on January 29, 2009. Though not technically the first bill he signed, that would be legislation fixing the salary of the secretary of the interior (P.L. 111-1): the Lilly Ledbetter Fair Pay Act is the first major legislation Obama signed into law. It is also first in from the 111th Congress labor and employment law legislative agenda.

Obama declaring that "[i]n signing this bill today, I intend to send a clear message: That making our economy work means making sure it works for everyone. That there are no second class citizens in our workplaces, and that it's not just unfair and illegal – but bad for business – to pay someone less because of their gender, age, race, ethnicity, religion or disability." He continued: "This bill is animportant step – a simple fix to ensure fundamental fairness to American workers – and I want to thank this remarkable and bi-partisan group of legislators who worked so hard to get it passed. And this only the beginning. I know that if we stay focused, as Lilly did–

and keep standing for what's right, as Lilly did – we will close that pay gap and ensure that our daughters have the same rights, the same chances, and the same freedom to pursue their dreams as our sons."

Background. The Lilly Ledbetter Fair Pay Act is seen as a legislative "fix" to the US Supreme Court's controversial May 29, 2007, decision in *Ledbetter v Goodyear Tire & Rubber Co, Inc* (89 EPD 42,827), where the High Court limited the time in which employees can bring disparate pay claims under Title VII.

The Court held that an employee must file charges with the Equal Employment Opportunity Commission (EEOC) within 180 days (or a 300 day period if the charge is also covered by a state or local antidiscrimination law) of an adverse pay setting decision, even if the employee is unaware of the employer's alleged "unlawful employment practice," otherwise the claim is time barred. The clock does not start running anew by the later issuance or receipt of paychecks incorporating the effects of that decision, held the Court.

"Treating pay discrimination as a discrete act, limited to each particular pay-setting decision, "the Court explained that the unlawful employment action at issue is the employer's decision regarding the differential, not the subsequent issuance of paychecks reflecting that differential. In so holding, the High Court emphasized the distinction between past acts of disparate pay (which occur when employers make adverse pay setting

decisions) and the present effects of those acts (which are found in employee's paychecks), when Concluding that the Petitioner, Lilly Ledbetter, should have challenged Goodyear's alleged intentionally discriminatory pay decision within 180 days of the adverse pay decision itself. Therefore, Title VII disparate pay actions are discrete acts "limited to each particular pay-setting decision, "explained the Court. They begin to run when an employer makes its decision on the pay differential. There is no new violation each time a later paycheck reflecting that differential is issued, ruled the High Court, rejecting and kind of "paycheck accrual" rule. Recognized by the EEOC, and the majority of the circuit courts, the "paycheck accrual" rule provides that each paycheck, impacted by a past adverse pay setting decision, is considerate a separate act of discrimination, triggering a new filing period with the EEOC.

The law. The Lilly Ledbetter Fair Pay Act was reintroduced by House Committee on Labor and Education Chair George Miller (D-Cal) on January 6 and Senator Barbara Mikulski (D-Md) on January 8. The House quickly passed the measure on January 9 by a vote of 247-171, days after the lower chamber of Congress convened its first session. The Senate approved the bill late January 22 by a vote of 61-36...

The House had to vote on the bill again because, when

it first passed the Lilly Ledbetter Fair Pay Act, it bundled the bill together with the Paycheck Fairness Act (H.R. 12), legislation the Senate did not act on; it intends to act on H.R. 12 in the Spring. The House debated and approved the bill pursuant to a closed rule (H. Res. 87) passed by the House Rules Committee, which called for no amendments. The bill cleared the House for a second and final time on January 27 and was sent to the President.

The Lilly Ledbetter Fair Pay Act amends Title VII, the Age Discrimination In Employment Act (ADEA), the Americans with Disabilities Act (ADA) and the Rehabilitation (Rehab) Act to states that an unlawful employment practice occurs, with respect to disparate pay, when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to a discretionary compensation decision or other practice; or (3) when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits or other compensation is paid, resulting in whole or in part from such a decision or other practice. Accordingly, the bill would reestablish the "paycheck accrual" rule (e.g., receiving a paycheck resulting in whole or in part from adverse employment action) as an appropriate method of filing a charge of discrimination with the EEOC. As long as employees file their charges within 180 days of such decisions or practices, their charges would be considered timely. In addition, employees who are victims of discrimination

would be entitled to up to two years of back pay, as already provided by the various

Appendix Doc. 4

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

MOTION FOR AN APPEAL
CIVIL ACTION FILE
NO. 4:07 – CV-208 –HLM

RANDALL MILNER JONES
PLAINTIFF

v.

ANHEUSER BUSCH, INC
DEFENDANT

Background:
Honorable Harold L. Murphy, Judgment passed in favor of defendant and against plaintiff, including award of $925.00 in expenses (1d). This judgment was based on a recommendation.

Discussion:
Honorable Harold L. Murphy, Defendant's first interrogatories and request for production has no time limits. The right to sue had a 90 day limit to

file and if not filed on time lost of cast this is on form. I filed myself on October 19, 2007 instead of waiting on attorney Jerry Boykin. He still owes me a $350.00 filing fee. I didn't want to risk late filing (Attachment A).

The defendant had plenty of information from The EEOC. The package has a document Someone altered. They wrote the date. I have included the document dated August 22, 2006. Someone circled the 2 to show change (attachment B) is original. The package was the charged against Mark Griffith. The charge against Pam Wofford they answered she was written up. The charge against Brice Bearden shows they corrected his name and said he quit. The charge against Paul Cousins. Both Brice Bearden and Paul Cousins were under the last chance agreement And were given another chance of employment after another problem. On November 14, 2008 I was still fighting this case. The plaintiff is still with the sins of the defendant. Defendant is not in a rush to receive $925.00 (attachment C).

Conclusion:

Honorable Harold L. Murphy, I Randall Milner Jones ask for a motion to appeal the recommendation to dismiss case No. 4:07-CV-208-HLM

Respectfully,

Randall M. Jones

Plaintiff shall serve responses to defendant's First Interrogatories & Requests for Production. Any objections are waived. Should plaintiff fail to comply with this order, counsel for defendant should notify the Court, and the undersigned will recommend dismissal of this action as a sanction. Should defendant desire to do so, it has 10 days from the date of this order to submit information sufficient to prove its expenses in connection with the filing of the instant motion. Plaintiff may respond to that submission within 10 days of its filing. Signed by Magistrate Judge Walter E. Johnson on 08/25/08. (klb) (Entered: 08/25/2008)

09/09/2008 18 Notice of petition for expenses incurred in preparing motion to compel by Anheuser Busch re 17 order on motion for sanctions, order on motion to compel, order on motion for extension of time to complete discovery. (Attachments: # 1 exhibit A – affidavit of Melissa Kotun) (Kotun, Melissa) Modified on 09/09/2008 to remove extra punctuation (jta). (Entered: 09/09/2008)

09/18/2008 19 Notice by Anheuser Busch re 17 order on motion for sanctions, order on motion to compel, order on motion for extension of time to complete discovery, regarding the court's order of August 25, 2008 (Kotun, Melissa) Modified on 09/18/2008 to edit text(tja). (Entered: 09/18/2008)

09/25/2008 Submission of 17 order with defts' 18 petition for expenses and 19 notice submittedto Magistrate Judge Walter E. Johnson. (jta) (Entered: 09/25/2008)

10/02/2008 20 FINAL REPORT AND RECOMMENDATION – Plaintiff's failure to cooperate in discovery and his failure to abide by an order of this court show that he has no interest in pursuing this action. Accordingly, the undersigned RECOMMENDS dismissal of this WITH PREJUDICE as a sanction under Fed. R. Civ. P. 37(b)(2)(A)(v). The undersigned RECOMMENDS that the clerk's judgment include an award to defendant of its reasonable expenses in the amount of $925.00 with order of service. Signed by Magistrate Judge Walter E. Johnson on 10/25/2008. (klb) (Entered: 10/02/2008)

10/22/2008 Submission of 20 FINAL REPORT AND RECOMMENDATION to District Judge Harold L. Murphy. (bjh)(Entered: 10/22/2008)

10/23/2008 21 ORDER adopting 20 Final Report and Recommendation and DISMISSES case w/prejudice, based on Plaintiff failure to cooperate in discovery and failure to obey a lawful Order of the Court. The Court AWARDS Defendant $925.00 in attorney's fees associated w/Defendant's Motion to Compel. Signed by Judge Harold L. Murphy on 10/23/2008. (bjh) (Entered: 10/23/2008

10/23/2008 22 CLERK'S JUDGMENT in favor of Defendant and against Plaintiff. Defendant is awarded $925.00 in attorneys' fee associated w/Defendant's Motion Compel. (bjh) –Please refer to http://ca11.uscourts.gov to obtain an appeals jurisdiction checklist—(Entered: 10/23/2008)

10/23/2008 Civil Case Terminated. (bjh) (Entered: 10/23/2008)

Appendix Doc. 6 13A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

Jones v. Anheuser Busch
Case #: 4:07-CV-00208-HLM

Honorable Harold L. Murphy, I, Randall M. Jones, received first notice of judgment, dated October 23, 2008, this morning at 10:45 AM, from Anheuser Busch's attorney. I was still pursuing this case. On November 14, 2008 I filed a claim of lien against Anheuser Busch, because I had not heard anything, I also faxed Mr. Boykin a copy of this lien on 11/14/2008 and to this day no response.

Honorable Harold L. Murphy I ask you, please do not hold me accountable for my attorney's action or non action. I ask you to please reconsider this case on grounds of faulty attorney, and let this case go forward. This case has merit.

Honorable Harold L. Murphy if you can reconsider and let this case proceed, that you please allow me time to find counsel or let me proceed on my own. I, also, ask that you order Mr. Boykin to send in all of my material including two cassettes that I sent to his office.

Thank you,
Randall M. Jones

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

Jones v. Anheuser Busch

Case: 4:07-CV-00208-HLM

Honorable Harold L. Murphy, I Randall M. Jones file for motion to dismiss Jerry Boykin as my attorney for case #: 4:07-CV-00208-HLM

Thank you,

_____

Randall M. Jones
21 Winterwood Trail
Taylorsville, Georgia 30178

(Attachment C)

Jackson Lewis
Attorney at law
Direct dial: (404) 525-8200
Email address: Kotumm@jacksonlewis.com

December 16, 2008

VIA OVERNIGHT MAIL

Mr. Randall M. Jones
21 Winterwood Trail
Taylorsville, Georgia 30178
(678) 882-6063
(770) 382-1239

Re. Claim of Lien, Bartow County Superior Court

Dear Mr. Jones:

Our firm represents Anheuser-Busch, Incorporated ("Anheuser-Busch"). We are in receipt of your Claim of Lien filed in the Bartow County Superior Court on November 14, 2008 against Anheuser-Busch's property in Cartersville.

The Claim of Lien against Anheuser-Busch is fraudulent and meritless. You have never been engaged by Anheuser-Busch to make any improvements to its real estate as alleged in the

Claim of Lien. Rather, you were employed by Anheuser-Busch as an Operations Technician on a can line at the Anheuser-Busch brewery in Cartersville, Georgia.

Nor have you obtained any judgment or settlement against Anheuser-Busch in Civil Action No. 4:07-CV -208, filed in the United States District Court, Northern District of Georgia, as alleged in the Claim of Lien. That action was dismissed with prejudice by the Court on October 23, 2008, and a judgment was entered against you in the amount of $925.00. A copy of the judgment is enclosed. Anheuser Busch, at this time, has not sought to collect the judgment against you, but retains the right to do so.

Accordingly, Anheuser-Busch requests that you voluntarily file a request to cancel Claim of Lien, in the form of the enclosed Request to Cancel Entry. Please not that your signature on the Request must be notarized.

If you fail to file the enclosed Request and Voluntarily cancel the Claim of Lien, Anheuser Busch will pursue all available remedies, including but not limited to: petition for involuntary cancellation of the lien; suit for slander or libel concerning title to land; andAnheuser-Busch's attorney's fees and costs Associated with your frivolous filing of the Claim of Lien.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-10136
Non-Argument Calendar

D. C. Docket No. 07-00208-CV-HLM-4

RANDALL M. JONES,

Plaintiff-Appellant,
versus

ANHEUSER BUSCH,

Defendant-Appellee

Appeal from the United States District Court
For the Northern District of Georgia

August 7, 2009

Before TJOFLAT, MARCUS and ANDERSON,
Circuit Judges.

PER CURIAM:
This is an employment discrimination action

Brought by a former Anheuser-Busch ("AB")
employee, Randall M. Jones, under Title VII of

the Civil Rights Act of

1964, 42 U.S.C. § 2000 e-2(a)(1). In his amended complaint, Jones, represented by retained counsel, alleged that AB discriminated against his race, black, when it terminated his employment for entering the wrong code; white employees, who

made the same mistake, were purportedly treated differently because they were white. Jones sought injunctive relief and damages. On October 23, 2008, the district court dismissed Jones's lawsuit with prejudice, because Jones refused to comply with a discovery order directing him to respond to AB's interrogatories and requests for production, see Fed. R. Civ. P.37(b)(2)(A)(v), and awarded AB expenses

in the sum of $925.00. Record, Vol. 1 at Tab 21. On December 18, 2008, Jones, now proceeding pro se, moved the district court for reconsideration of its October 23, order. Id. At Tab 23. He sought relief

from untimeliness of his motion by stating that his attorney had not informed him of the October 23 order until December 17. Id. The court denied his motion in an order entered on December 19, 2008.

Id. At Tab 25. After observing that Jones

"voluntarily chose his lawyer, and [that] there is

no indication that [the] lawyer was acting outside thescope of his authority as [Jones's] counsel" in refusing to comply court held that Jones was "responsible for his lawyer's with the court's

discovery order, the actions or inactions in this

case" Id. Jones, still proceeding pro se, appealed the October 23, order on January 6, 2009. We dismissed the appeal as it related to the October 23 order for lack of jurisdiction, but permitted the appeal to go forward to the extent that it challenged the December 19 order denying reconsideration.

A district court may dismiss a plaintiff's lawsuit suit based on his counsel's conduct-here, counsel's refusal to comply with a discovery order—because "each party is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.'" **Link v. Wabash R.R. Co.**, 370 U.S. 626, 634, 82 S.Ct. 1386, 1390, 8 L.Ed.2d 734 (1962) (quotation omitted) (holding that dismissal of a suit with prejudice was within the district court's discretion based on counsel's unexplained absence at a pretrial conference and other evidence of delay). Given what transpired in this case, we cannot say that the district court abused its discretion in holding Jones responsible for counsel's misconduct and his case.

AFFIRMED

Foot notes:

The court entered final judgment pursuant to the October 23 order the same day.

We construe a motion for reconsideration of a final judgment that is not filed within 10 days of the entry of the judgment—which is the situation here—as a motion for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. **Mahone v. Ray**, 326 F.3d 1176, 1178 n.1 (11th Cir. 2003). The motion is committed to the district court's sound discretion. **Waddell v. Hendry County Sheriff's Office**, 329 F.3d 1300, 1309 (11th Cird. 2003).

In his motion for reconsideration, Jones stated that he did not learn of the October 23 order and the entry of judgment until December 18, when AB's counsel notified him that the order and judgment had been entered. He asked the court not to "hold [him] accountable for [his] attorney's action or non action," and to "reconsider this case

on grounds of faulty attorney; and let this case go forward." In addition to arguing that the court abused its discretion (in denying his motion for reconsideration) by holding him accountable for his attorney's conduct, Jones's appeal (of the denial of reconsideration) presents additional arguments for reversal. We do not consider them, however, because, because they were not presented to the district court in the first instance. Access Now, Inc. v. Southwest Airlines Co., 385 F.3d 1324, 1331 (11th Circ. 2004).

IN THE UNITED STATES DISTRICT COURT FOR THE NERTHERN DISTRICT OF GEORGIA ROME DIVISION

RANDALL M. JONES,

Plaintiff,

v.

ANHEUSER BUSCH,

Defendant

FINAL REPORT AND RECOMMENDATION

By Order [17] dated August 25, 2008, the undersigned granted defendant's Motion to Compel [16] and Requests for Production that had been served upon him on May 14, 2008. Plaintiff was further warned that, it he failed to comply with that Order, this Court would recommend dismissal of his case as a sanction under Fed. R. Civ. P. 37(b)(2)(A)(v). In a notice [19] filed September 18, 2008, defendant informed the Court that plaintiff did not comply.

In granting defendant's Motion to Compel, the Court also ruled that it would order plaintiff fo pay the reasonable expenses incurred by defendant in filing its Motion to Compel unless he submitted information showing that his non-response was substantially justified or that other circumstances made an award of expenses unjust. See Fed. R. Civ. P. 37(a)(5)(A). Plaintiff failed to submit anything to the Court.

Plaintiff's failure to cooperate in discovery and his failure to abide by an Order to this Court show that he has no interest in pursuing this action. Accordingly, the undersigned Recommends dismissal of this action with prejudice as a sanction under Fed. R. Civ. P. 37(b)(2)(A)(v). The undersigned further recommends that the Clerk's judgment include an award to defendant of its reasonable expenses in the amount of $925.00.

So recommended, this 2nd day of October, 2008.

Walter E. Johnson

UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NERTHERN DISTRICT OF
GEORGIA
ROME DIVISION

RANDALL MILNER JONES,
Plaintiff,

v.

ANHEUSER BUSCH,
Defendant,

ORDER FOR SERVICE OF FINAL REPORT
AND RECOMMENDATION

Let this Final Report and Recommendation of the United States Magistrate Judge, made in accordance with 28 U.S.C. 636(b)(1)(B), Federal Rule of Civil Procedure 72(b), and the Court's Local Rule 72.1B, be filed and a copy, together with a copy of this Order, be served upon counsel for the parties.

Pursuant to 28 U.S.C. 636(b)(1), each party may file written objections, if any, to the Final

Report and Recommendation within ten days of the receipt of this Order.

Should objections be filed, they shall specify with particularity the alleged error(s) made (including reference by page number to any transcripts if applicable) and shall be served upon the opposing party. The party filing objections will be responsible for obtaining and filing the transcript of any evidentiary hearing for review by the District Court. If no objections are filed, the Final Report and Recommendation may be adopted as the opinion and order of the District Court, and any appellate review of factual findings will be limited to a plain error review. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983) (per curium).

The Clerk is directed to submit the Final Report and Recommendation with objections, if any, to the District Court after expiration of the above time period.

So ordered, this 2nd day of October, 2008.

Walter E. Johnson

UNITED STATES MAGISTRATE JUDGE

Appendix Doc. 11

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
GEORGIA
ROME DIVISION

Randall Milner Jones,

Plaintiff,

v. CIVIL ACTION FILE

NO. 4:07-cv-0208-HLM

Anheuser Busch, Inc.,

Defendant,

ORDER

This case is before the Court on the Final Report and Recommendation of the United States Magistrate Judge Walter E. Johnson [20].

On August 25, 2008, Judge Johnson granted Defendant's Motion to Compel, and directed Plaintiff to respond to Defendant's First Interrogatories and Requests for Production within ten days. (Order of Aug. 25, 2008.) Judge Johnson cautioned Plaintiff that, if Plaintiff failed to comply with the August 25, 2008, Order, Judge Johnson would recommend that the Court dismiss Plaintiff's case. (Id.) Judge Johnson also indicated that he would order Plaintiff to pay Defendant's reasonable expenses incurred in connection with its Motion to Compel, unless Plaintiff submitted information showing that his failure to respond was substantially justified or that other circumstances made an award of expenses unjust. (Id.) Plaintiff submitted no information showing that his failure to respond to the discovery requests was substantially justified or that other circumstances made an award of expenses unjust. Defendant, however, sought to recover

$925.00 in attorneys' fees associated with its Motion to Compel.

On September 18, 2008, Defendant filed a notice indicating that Plaintiff failed to respond to Defendant's First Interrogatories and Requests for Production as directed in the August 25, 2008, Order. (Docket Entry No. 19.) On October 2, 2008, Judge Johnson issued a Final Report and Recommendation, in which he recommended that the Court dismiss Plaintiff's case with prejudice, based on Plaintiff's failure to cooperate in discovery and on Plaintiff's failure to comply with the August 25, 2008, Order. (Docket Entry No. 20.) Judge Johnson also recommended that the Clerk's judgment include an award to Defendant of expenses and attorneys' fee of $925.00.

The court has reviewed the Final Report and Recommendation and the record in this case, and concludes that Plaintiff has failed to cooperate in discovery and that Plaintiff failed to comply with the August 25, 2008, Order.

The Court further finds that Plaintiff failed to show that his failure to respond to Defendant's First Interrogatories and Requests for Production was substantially justified or that other circumstances made an award of expenses unjust. The Court therefore finds that an Order dismissing this case is warranted, and that an award of expenses unjust. The Court therefore finds that an Order dismissing this case is warranted, and that an award of attorneys' fee to Defendant of $925.00 also is warranted.

Accordingly, the Court adopts the Final Report and Recommendation of United States Magistrate Judge Walter E. Johnson [20], and dismisses this case with Prejudice, based on Plaintiff's failure to cooperate in discovery and failure to obey a lawful Order of the Court in the case. The Court Awards Defendant $925.00 in attorneys' fees associated with Defendant's Motion to Compel. The Court

Directs the Clerk to close this case, and Directs the Clerk to enter judgment in favor of Defendant and against Plaintiff, including an award of $925.00 in expenses.

It is so ordered, this the 23rd day of October, 2008.

UNITED STATES DISTRICT JUDGE